

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on January 23, 2001 at 3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. Joe Balyeat, Vice Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Tom Facey (D)
Rep. Nancy Fritz (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Larry Jent (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: Rep. Brett Tramelli (D)

Staff Present: Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 305, 1/21/2001; HB 306,
1/21/2001
Executive Action: HB 142

HEARING ON HB 305

Sponsor: REPRESENTATIVE GAIL GUTSCHE, HD 66, MISSOULA

Proponents: Jeff Barber, Montana Wildlife Federation
Stan Frasier, representing himself
Stan Rauch, Montana Bowhunters Association
Terry White, Hunters and Sportspeople

Opponents: Mark Taylor, Montana Alternative Livestock
Producers
Ken Mesaros, representing himself
Nancy Schlepp, Montana Stockgrowers, Montana
Farm Bureau
Paige Dringman, Montana Landowners Alliance
Kim Kafka, Montana Alternative Livestock
Producers

Informational Witnesses: Jacqueline Lenmark, American Ins. Assn.
Dr. Arnold Gertonson, Dept. of Livestock
Tim Feldner, Fish, Wildlife and Parks

Opening Statement by Sponsor:

REPRESENTATIVE GAIL GUTSCHE, HD 66, MISSOULA, stated the purpose of HB 305 is to require a Bond for a licensee who applies for renewal of an alternative livestock ranch license. At the time of annual license renewal, the owner provides a bond based on acreage and number of alternative livestock in the amount of \$325 for each alternative livestock ranch acre and \$325 for each alternative livestock animal. Under HB 305, FWP may recover expenses incurred in retrieving escaped alternative livestock and testing or disposing of diseased or genetically polluted alternative livestock. Failure to Bond will result in license suspension. From 1995 to 1999 FWP has spent \$1 million collected from hunting license fees at the rate of about \$200,000 yearly to regulate and monitor game farms, and to protect our public wildlife from diseases such as tuberculosis and chronic wasting disease. During that same time, game farmers have paid \$38,850 in annual fees. This Bill is a way to make sure the money does not come out of Montana taxpayer's pockets.

Proponents' Testimony:

Jeff Barber, Montana Wildlife Federation, states this Bill is not about an issue of I 143, just passed in the last Election. The Bill sets up a bonding mechanism for Montana game farms. The \$1 million REPRESENTATIVE GUTSCHE quoted does not include the amount

of money spent by the FWP and the Department of Livestock (DOL) to retrieve escaped animals and dispose of diseased animals. According to an article titled "**Deadly Venison**", in the February 2001 issue of **FIELD AND STREAM**, we need to keep track of escaped animals and catch them because of the threat of chronic wasting disease (CWD) to both animals and humans. An example of the cost associated with retrieval and disposal would be at a game farm near Hardin where FWP spent \$10,000 to destroy 29 elk with possible CWD. Another example was at Kessler Game Farm near Phillipsburg where FWP had to kill 92 animals because of an outbreak of CWD, the cost of which was \$60,000. It is that figure that the bonding is based on in this Bill. They took \$60,000, divided it by the number of acres on that farm and rounded it up to \$325. The Bill states that if the operator of the game farm does not voluntarily retrieve escaped animals or dispose of diseased animals, then the Bond can be used to pay.

Stan Frasier, representing himself, and Treasurer for I 143, states he supports HB 305 because elk ranching causes problems. In Saskatchewan, right across the border, almost 2,000 elk have been destroyed due to CWD. States that Department of Livestock has a fund to deal with disease outbreaks, but there isn't enough money in it. With elk ranching, they make money by selling breeding stock to other people who want to get in the business. Problems arise because there is vast movement of animals from one ranch to another, and that is how these diseases are moved. Is concerned that there will be more problems created by elk ranching. Feels it is important that game farm ranchers pay their own way.

Stan Rauch, Montana Bowhunters Association, and Ravalli County Fish and Wildlife Association states the history of game farm industry in Montana is full of instances of disease. This Bill is important because Montana hunters, through FWP dollars, have had to bear the cost of pathology tests, helicopters, and incinerators to burn carcasses. Concerned because of several things: why is it necessary for FWP and DOL to go to game farms such as the one at Phillipsburg to eradicate domestic herds of elk due to CWD? Why have game farms in two Canadian Provinces reported instances of CWD in captive herds? Two instances were traced back to animals originating Montana. Of the 260 game farm elk diagnosed with CWD and eradicated as a result of it, why did nearly 1/3 occur in Montana. Why has the Canadian food inspection agency carried out whole herd de-populations of over 1700 game farm elk, with 500 still to come? Why was a 12/29/00 ban put on the importation of Royal Canadian velvet antler and meat products derived from elk? The responsibility for paying costs associated with game farms belongs with the game farmer, responsibility should not be up to the taxpayers or sportsmen.

Terry White, representing Hunters and Sports-people, stated there is a lack of awareness of what chronic wasting disease (CWD) is, and the public should be informed. She had posters made up containing information on CWD and brought them for distribution **EXHIBIT (fih18a01)**. She stated this information should be made available to everyone before the next hunting season. Hunters have a right to know the risk facing them when they are cleaning a deer or an elk. When we shoot a deer or an elk, we have no idea if it is contaminated with CWD, and won't know until it is tested. Asks the committee consider including this information in next year's hunting regulations.

Opponents' Testimony:

Mark Taylor, Montana Alternative Livestock Producers, stated a lot of this testimony does not address HB 305, but to clarify several misconceptions, will address CWD. Montana operates under the most stringent CWD testing protocols in the U.S. There has never been a documented case of CWD transmission from elk or deer to either humans or livestock. CWD is endemic in wild populations in Colorado, Wyoming and Nebraska. It is not just a game farm problem. His concern on HB 305 is the required bond. Refer to Section 1, Sub 4 regarding fee structure. The amount of bond required on his family farm would be half a million dollars. The mandatory CWD rules and those testing protocols require that we test every animal that dies on our farm. This has been done for over two years. 20% of the animals on our ranch have been tested for CWD and all came back negative. There is a total of about 4,000 alternative livestock, and 900 have been tested for CWD, which is a significant percentage. To the extent that the producers are trying to do their fair share, the costs associated with this Bill are overly burdensome. There are problems with Section 1, Sub 4(C) and (ii), with how the department is supposed to implement the statute. DOL already has a funding mechanism in place to re-capture these costs. Another problem is in Section 3. Refer to Section 3, Sub (1)(a) for criteria about revoking the license. Turn to Section 3, Sub 3(b) in terms of the penalties associated with this. FWP already has mechanisms in place to address these issues. Further, see Section 3, Sub 4 which imposes a criminal prosecution threat, a fine, and possible imprisonment for failure to comply with the statutes. This Bill imposes a significant financial burden and we urge that you do not pass this legislation.

Ken Mesaros, Rancher and former Senator, stated they have also found it necessary to diversify from traditional agriculture into elk ranching as a way to enhance the sagging agriculture economy. All the options were reviewed before he invested in this, to insure that all safeguards were in place for their existing

operation as well as any wildlife in the area. The cattle and the elk are managed the same, providing shelter and nutrition for both. Animal health is a high concern. Diseases in cattle are always a concern, bangs, blackleg; the same concerns are there with their elk, as that is their livelihood. Before licensing their farm, full environmental review (50-60 Pages) by FWP and DOL was done to identify any concerns. Any disease concerns, fencing, egress, ingress, etc. are addressed before a license is issued, and stipulations are placed on the license. There have been problems in the past, but we learn from problems and address those by strict health regulations. 100% testing after six months of age. Montana requires a five year surveillance on any elk imported from out of state. Concerned why surety bond is necessary, as CWD has been identified in only one instance in Montana. It has been identified in Wyoming and Colorado and has been there for many years. Sportsmen of Montana can go there, harvest those animals, and cross the border unrestricted; unless it is a voluntary check for CWD. Those animals can be disposed of as with any other wild animal. There are concerns and means of transmitting CWD in many different ways, but this is not an alternative livestock issue. It has been identified in only one instance. Concerned that his ranch will have to post a bond for \$250,000 just to do business in the State of Montana, he urged that this bill would not be passed.

Nancy Schlepp, Montana Farm Bureau and Montana Stockgrowers Association, stated they are opposed to HB 305 and other opponents have stated it well. The true impact of this bill would be to take away any profit margin that the alternative producer has and put them out of business. Also need to consider the economic growth that we would like to have in Montana.

Paige Dringman, Montana Landowners Alliance, stated they have no landowners in the game farm business. They are concerned from a standpoint of people in agriculture that have diversified. Looking at the issue of disease, we would agree that we have to be extremely vigilant with regard to diseases, whether they are transmittable to livestock, to humans, or to our wild elk and deer populations. Is concerned that the bill does not address that problem, but is more punitive in nature. A bonding requirement based on the amount of land seems to be the scope of the bill. We feel that science needs to guide these kinds of decisions. The science here seems to be what happened in Canada. There are other ways this disease could be transmitted that we aren't addressing. Need focus on those areas as well. Comments that we say we spend \$1 million of sportsmen dollars regulating game farms, etc. Most landowners are sportsmen, most buy conservation, hunting and fishing licenses. As a landowner, it is my money being used, too, and I don't always agree with what FWP does with my money. I think we all have a responsibility to

allow the state to determine what uses will be made of that money, for the betterment of all of us. Shares some of the concerns of prior speakers and ask you to really look at the bill and see if this is the way you want to have the state go about protecting from CWD.

Kim Kafka, rancher from Havre, stated his family has also diversified into alternative livestock. As a member of the Governor's Negotiated Rules Committee, the issue of CWD came up at the end of our Rules process. The only reason CWD was diagnosed in Montana is through a mandatory program working with the DOL. Only one herd in Montana was found to be diseased. This is not an outbreak, and it is not a game farm disease. CWD is a deer and elk disease, and a healthy herd is our top priority. Would ask you to reject this Bill.

Informational Witnesses:

Jacqueline Lenmark, American Insurance Association, and also speaking for **Roger McGlena, Independent Insurance Agents of Montana**, who had to leave. The AIA and the IIAM have no position on the core policy of this Bill. Is concerned that the surety provisions of this Bill have not been considered. The committee needs to be made aware that the kinds of bonds required for this Bill probably will not be available, or will cost nearly as much as the amount being bonded. Surety bonds are not like ordinary insurance policies. This is not a contract between the insurance company and the person insured. With a surety bond, the obligee (the person to whom the payment might be owed) looks first to the obligor (licensee), and only when the licensee cannot perform his obligation does the obligee look to the surety bond to guarantee the payment. There are some technical problems with the way the bonding is set out in the Bill. The first is in Section One, Sub Four(c), "Following an opportunity for a licensee to pay...." The word "opportunity" presents a problem. If there is only an opportunity for licensees to pay, there will be no bonds available for purchase. Explained that the surety bond only comes into play when the licensee has no ability to pay, and has been unable to perform. The other technical problem is in Section 3, Sub 5, "If the department is notified by a surety that the licensee has failed to maintain the bond...." If there is a notification requirement placed upon the surety company, rather than on the licensee, there will be no bonds available in the marketplace. As the committee considers this mechanism, be aware of the very high cost, probable non-existence of the bond, and the other technical problems related to this kind of security mechanism.

Questions from Committee Members and Responses:

REPRESENTATIVE SHOCKLEY asked if the purpose of the Bill was just to protect the state from costs if there was accident.

REPRESENTATIVE GUTSCHE agreed; they would bond themselves to be responsible for costs of their own operation. **REPRESENTATIVE SHOCKLEY** asked, then it was simply to protect the people and was not intended to increase the alternative rancher's cost?

REPRESENTATIVE GUTSCHE replied, no it was not intended to increase their cost. **REPRESENTATIVE SHOCKLEY** stated he agrees with **Jacqueline Lenmark**, about Section One, Sub 4(c). Before the person providing the bond has to actually pay, you usually have to give them more than an opportunity; something like a demand and refusal. Perhaps that could be cleaned up. If the idea is simply to protect the public, you could use a property bond to cover the judgement. Would you object to an amendment using a property bond for a landowner? **REPRESENTATIVE GUTSCHE** stated it is now clear that this part of the Bill needs some cleanup, and would entertain this idea.

REPRESENTATIVE DEVLIN asked if there are any other forms of livestock besides elk that are included under alternative livestock, such as ostrich. **REPRESENTATIVE GUTSCHE** deferred to **Stan Frasier** who stated the alternative livestock act specifically listed deer, elk, antelope, big horn sheep, mountain goats. It does not include emus, ostriches and llamas.

REPRESENTATIVE BARRETT asked, is it correct that the Wildlife Federation is concerned about chronic wasting disease? **JEFF BARBER, MWF** affirmed they were. **REPRESENTATIVE BARRETT** asked how much they are spending annually in research for CWD. **JEFF BARBER** stated he would have to check, but probably nothing.

REPRESENTATIVE THOMAS asked for an explanation why bison are not included in the designation of alternative livestock. **STAN FRASIER** stated that bison have a dual designation in Montana as both wildlife and livestock, doesn't think they are under the alternative livestock designation, but is not sure why.

REPRESENTATIVE RICE asked for explanation of the rationale behind the \$325 per acre. **REPRESENTATIVE GUTSCHE** said this was based on the worst case scenario presented at the Kessler Game Farm, 92 elk on 900 acres. Last cost was \$60,000. They did the division and figured it out from there. **REPRESENTATIVE RICE** asked, then for a cattle rancher who has diversified into farming; would his cost be based on the area where the elk are or the entire ranch? **REPRESENTATIVE GUTSCHE** answered, the area where the elk are.

REPRESENTATIVE GALLUS asked how many head of elk were put down in the Phillipsburg incident. **Mark Taylor, MALP** answered 92.

REPRESENTATIVE GALLUS asked if there was any kind of compensation or specific dollar amount that the state gave to that particular rancher. **Mark Taylor** answered that a total of \$500 was paid per animal. \$400 came from domestic producers; an additional \$100 per animal was added out of our own pocketbooks, in understanding the financial and emotional stress of the producer.

REPRESENTATIVE GALLUS asked for a break down as to how much of the \$100 came from DOL money and how much from FWP. **Mark Taylor** stated \$50 apiece. The producer agreed to voluntarily depopulate his entire herd, versus any sort of important action from either DOL or FWP, which is significant. It was felt this played a role in the compensation issue.

REPRESENTATIVE RIPLEY stated that the sponsor told us \$1 million is collected annually from sportsmen licenses to monitor game farms, and others testified it would save taxpayer dollars to do this same thing. Please clarify where the money to monitor game farms comes from. **JEFF BARBER, MWF** stated the \$1 million is the amount FWP has spent for regulatory matters, inspections, etc. The amount received from annual fees is \$38,850. The money spent at Hardin for disposal of animals there, and at Kessler was not a line item in the budget. This is above and beyond what they were already spending. Would need to speak to the person who does the budget for the exact amount of money.

REPRESENTATIVE BALES stated the game farm people seem to be making every effort by testing their elk, to find out if there is a problem in the state in their domestic elk. What is FWP doing about the disease problem in the wild herds, and what steps have you advocated to address that, because it has definitely been shown in wild herds? **JEFF BARBER, MWF** answered the point of this bill was not to be on CWD, it was to recover costs the department was incurring in retrieving and/or disposing of animals. Will have to get back with the answer. Can't give a specific answer as to what MWF is doing about the disease problem in the wild.

REPRESENTATIVE BALES asked if DOL, rather than FWP is responsible for handling the disease problem in elk, and isn't that in their budget? **JEFF BARBER, MWF** there is an overlapping, very confusing authority on that. At the Kessler ranch, it was the Department of Livestock that handled the testing. At Hardin it was more out of FWP's budget. Is not sure who is responsible for what.

REPRESENTATIVE BALES said there are people from both departments here today, maybe one of them would address the issue.

Vice Chairman Balyeat stated that without objection, someone could speak as an informational witness.

REPRESENTATIVE BALES' question of which department is responsible for handling the disease problem in elk is addressed by **Dr. Arnold Gertonson, State Veterinarian**, with the Montana Department of Livestock who stated, the DOL is responsible for disease control for any livestock operations, and FWP is responsible for licensing. **REPRESENTATIVE BALES** said that for any disease, then DOL would be bearing the cost associated with that. I believe the alternative livestock people pay a per capita fee to help with those costs, is that true? **Dr. Arnold Gertonson** replied that is true, and it will be \$24 per head for this coming year.

REPRESENTATIVE FACEY stated if an animal is suspected of having CWD, is there any way to test for that disease without having to kill the animal? **Dr. Arnold Gertonson** replied that for CWD, the only way to test is after the animal is dead, by using tissue samples from a portion of the brain.

REPRESENTATIVE CLARK said if there was no objection he would like to ask a question of **Tim Feldner, FWP**. Have there been any incidents of CWD discovered in wild animals in Montana. **Tim Feldner, Manager of the Commercial Wildlife Permitting Program, FWP**, replied, there have not. **REPRESENTATIVE CLARK** stated he is concerned about the Kessler operation, and the cost; a lot of which went to the DOL. Please go through the costs associated with cleaning up the Kessler operation and why they were distributed the way they were. **Tim Feldner** stated the Kessler operation had been put under a quarantine by the DOL. The depopulation that took place was basically a DOL effort, with minimal FWP involvement. The only FWP involvement was the \$50 per animal mentioned earlier. **REPRESENTATIVE CLARK** asked about the total cost of the operation. Can you give an estimate of fees involved in this? **Tim Feldner** stated there is an application fee, then a renewal fee. Kessler had been in for about 15 years, and probably \$3,000-4,000 was paid over 15 years to FWP to manage their operation. Cost of cleanup was around \$60,000.

VICE CHAIRMAN BALYEAT asked what the total cost of fees paid by all the alternative livestock producers would be. **Tim Feldner** replied there have been changes in the fee schedule throughout the years. Last year, FWP took in \$16,000-\$17,000 through the alternative livestock industry. By statute, which changed in 1999, half of that money goes to the DOL, so they collected \$8,000-\$9,000.

REPRESENTATIVE LASZLOFFY asked if there is an ongoing testing program for the wild population. **Tim Feldner** replied that there is. FWP began the testing process in 1996 with the elk herd in the greater Yellowstone area. Since 1998 we have been collecting

samples from the check stations. FWP collected samples from over 1,000 animals in 1998 and 1999. We have yet to complete testing the samples we collected from the year 2000.

REPRESENTATIVE FUCHS stated there has been a broad discussion, but this is about bonding for alternative livestock business. There has been testimony that this isn't about CWD. What is the average size of an alternative livestock acreage; what is the average number of animals; and what is the cost of the bonding to the individual that has to pay for it? **Mark Taylor, MALP**, stated there are 13,000 acres for alternative livestock facilities behind fence. There are over 4,000 animals, so total bonding would be in excess of \$6 million. **REPRESENTATIVE FUCHS** asked, average size of facilities, what does this break out to per person. **Mark Taylor** stated, the size ranges from 10-15 acres to 1250-1300 acres. In terms of animal numbers, it ranges from a handful up to 700 or 800 animals.

{Tape : 1; Side : B}

REPRESENTATIVE DEVLIN stated, your testimony concerning the amount of money you paid out got sidetracked into just the Kessler thing. This bonding does address other things such as retrieval of escaped game. Do you have the numbers as to what FWP has spent on other issues? **Tim Feldner, FWP** replied, if an animal escapes from an alternative livestock facility, the operator has five days to recover the animals, otherwise they become the property and responsibility of the state. There were one or two instances in 1999. In 2000, we had two instances involving seven elk. One of those elk was not recovered and that involved some expense. Total expense for those two years combined was \$10,000 in terms of helicopter, flight time, incidentals, department time, etc. **REPRESENTATIVE DEVLIN** stated that we already have a fee schedule in place; did those fees that game farm owners are paying cover that \$10,000 cost you just spoke about? **Tim Feldner** said yes, over the last two years the renewal fees would have covered the cost.

REPRESENTATIVE GALLUS asked if there were there two elk in Twin Bridges that were recovered. **Tim Feldner** stated yes, they were included in the 1999 total.

VICE CHAIRMAN BALYEAT stated testimony from one proponent said this was not related to I 143, yet testimony throughout indicates that the costs of the Kessler incident and other incidents have been recouped through the fees that are paid, not specifically by Kessler, but through fees paid by all the alternative livestock producers. If you added those up throughout the life of this whole industry, then certainly the fees have covered those costs.

I would argue that is what those fees are for, is to cover regulation. It seems there are ways to go after specific livestock producers if they have done something wrong, in terms of a substantial fine. There are already mechanisms in place to recoup these costs, so from my perspective, some of the motivation might be connected with I 143. The way I 143 was drafted, it has no effect until there is new ownership. Doesn't see logic of bill. Bond money just sits there, can't be used for current operations and is paid to an entity other than government. What do you see the substance of this bill doing, in terms of running the program, other than imposing an additional cost on alternative livestock producers? **REPRESENTATIVE GUTSCHE** replied yes, the bond money goes to a bonding agency, but if the DOL or FWP incur expenses, they recoup that money back. It does not go directly to them, but no longer would they have to pay for retrieving, disposing animals, or destroying animals. That is the purpose of the bond. This does not have anything to do with I 143; this bill does not amend or affect it in any way. The purpose of this bill is for alternative livestock farmers to pay for their own operations. In terms of the fees covering costs, you need to redirect your question to **Chris Smith**.

REPRESENTATIVE BALYEAT asked the same question of **Chris Smith**, **FWP** who responded. The fees paid to FWP are license application and license renewal fees. There is a per capita per animal paid to DOL. Total cost of obligations with respect to managing alternative livestock is about \$200,000 per year. Revenue to the department is from \$8,000-\$15,000 per year to FWP. For the overall FWP program, we are spending more in terms of license dollars than we are bringing in. Broke down to specific instances such as Kessler, FWP voluntarily assisted DOL because of our interest in seeing that herd depopulated and getting the best possible information on the status of CWD.

Closing by Sponsor:

REPRESENTATIVE GUTSCHE said this bill is not about CWD, but since there was a lot said about it and since it would affect the spread of CWD, will make several points. There is no live testing for CWD, no cure for CWD, no vaccine, and it is always fatal. Someone testified that this is not a game farm issue, but it clearly is because those are the animals that are found to have it. Of the 92 destroyed on the Kessler ranch, five did have CWD. We are not seeing it in our wildlife populations, and we don't want to. That is part of the reason for this Bill, to see that those wild animals are protected. As other testimony indicated, Wyoming has CWD; lots of states do. Wyoming outlawed game farms back in the 1970's. I am not an expert on the bonding and surety issues, so called **former Representative David Ewer**, a bonding expert. Did not ask about all the specific language that

came up, and maybe some of that would need to be amended. His response to the testimony that bonds won't be available and would be cost prohibitive, was that just because they haven't bonded for this before, doesn't mean they can't come up with a bond for this. If they can bond piano players hands or singers voices, they can certainly bond game farms. If it is prohibitively expensive, then I suggest that is because this is a dangerous operation. A bond is a specific kind of insurance and we would have to wait and see what it would cost. Obviously it would cost different for different sized operations. Reminds everyone this is a hunter protection bill, and it is common sense for game farmers to pay bonding for their operations, just as the rest of us pay bonding or insurance for our businesses.

End Hearing on HB 305.

HEARING ON HB 306

Sponsor: REPRESENTATIVE JOE BALLYEAT, HD 32, BOZEMAN

Proponents: Vito Quatraro, Headwaters Fish and Game Assn.
SENATOR KEN MILLER, SD 11, LAUREL

Opponents: Jean Johnson, Montana Outfitters and Guides
Mary Ellen Schnur, Montana Outfitters and Guides
Tom Hougen, Landowner
Kelly Flynn, Montana Outfitters and Guides
Todd France, Self
Robin Cunningham, Self
Chris Smith, Fish, Wildlife and Parks

Opening Statement by Sponsor:

REPRESENTATIVE JOE BALLYEAT HD 32, BOZEMAN, said the purpose of HB 306 is to make a change in the requirements for setting aside nonresident big game and deer combined licenses. His remarks are contained in **EXHIBIT(fih18a02)**. One technical amendment that will be offered affects the fiscal note, **EXHIBIT(fih18a03)** the other is to limit the number of non-residents that a Montana hunter can sponsor to two hunters, **EXHIBIT(fih18a04)**.

Proponents' Testimony:

Vito Quatraro, Headwaters Fish and Game Assn. Written testimony was read into the record by REPRESENTATIVE JOE BALLYEAT, **EXHIBIT(fih18a05)**.

SENATOR KEN MILLER, SD 11, LAUREL, was in another committee and unable to speak at the appropriate time. His actual testimony followed that of **Chris Smith, FWP**. **SENATOR MILLER** states this is a good compromise. There is a need for new ideas to adjust what the 1993 commission did. This is a guaranteed issue of licenses to nonresidents to hire an outfitter, not a guaranteed profit. As government, we shouldn't be guaranteeing anybody a sector of customers. This has been a philosophical problem ever since the legislation was enacted. If I 136 would pass or this legislation would pass, it wouldn't eliminate outfitters. We wouldn't want to do that. We are all very pro-business, and supportive of their business as such. Is also supportive of sportsmen in general, and has a brother living out of state, so feels issuing nonresident licenses to a direct family member would be good.

Opponents' Testimony:

Jean Johnson, Montana Outfitters and Guides stated a subsidy is a payment by the government for the clients that don't come. The Montana government has set this system up so there is no free marketplace here. It is not a free enterprise system. No one has told the CPA's of Montana that there are only 23,000 clients that they can market to, but the government has told the outfitting industry that there will be 23,000 nonresidents that hunt. So lets not talk about free enterprise in the outfitting industry. Lets move on to HB 306. It is a blueprint for chaos, promotes illegal outfitting. Enforcement becomes a nightmare, you have the nonresident coming on a guaranteed license and the requirement is that he comes with a Montana sportsman. How are you going to know he is hunting with a Montana sportsman? Is he going to be within sight and sound at all times? If he is on private land, how will you know if the landowner is accompanying that nonresident hunter? Unless you have evidence there is something going on, I don't think you have a right to access that private land to find out. Currently, the number of nonresidents that come on a guaranteed license are controlled as to where they go in Montana, because outfitters are controlled by their operations plan and their forest service permit. With HB 306, you have an unknown number of nonresidents hunting with the resident hunter and they can go anywhere in the state, unimpeded by any regulations. Regarding the price of the guaranteed license. There are two things that control the numbers that allow the guaranteed nonresident to hit a target: the price, and the fact that they have to go with a Montana outfitter. By March 15, 2002 the state will honor this bill and the ability will be there to take two nonresidents. There is no precedent for setting the price of this license, and don't know how many nonresidents there will be. In the first year, 1996, there was a precedent; you knew how many outfitters there were and you knew

what could control that demand. The elk license carried for five years. Try to figure out how many of the 170,000 Montana hunters will take advantage of this opportunity. You will have to come up with a price that will control that demand down to 5500 elk and 2300 deer. What will be the price of a deer license? It doesn't matter that all of that money will go to block management, if the land owners are getting two of these licenses and doing their own hunt. They will say, I'm sorry but I'm out of block management. The WHEREAS clauses concern me; look at Page One, #3, the outfitters advantage to acquiring hunting rights. What hunting rights do outfitters acquire under the guaranteed license? They didn't get more licenses, so it must be that they had greater ability to lease. The landowner makes that decision, based many times not on money, but on control and numbers of people that can hunt. Leasing is not a right, it is a privilege. Resident sportsmen and hunting clubs are competing for those privileges. Also, on Page One, WHEREAS #4, line 24 refers to a government guaranteed stream of income. It might be a guaranteed stream if you stretch your imagination, but, the guarantee comes when you have business coming to you, the outfitter doesn't have any guarantee. Please reject HB 306.

Mary Ellen Schnur, Montana Outfitters and Guides, stated that HB 306 will destabilize the outfitting industry, eliminating many small family outfitting businesses. It will produce a large number of unregulated, unlicensed sponsors, and it will allow an unlimited number of new hunters into block management lands, creating the potential to outbid the block management program for use of currently enrolled land. Please vote against HB 306. Written copy of her remarks may be found in **EXHIBIT(fih18a06)**.

Tom Hougen, Landowner, HB 306 will disrupt the balance between the industry segments. Hunters, landowners and outfitters need to have a level playing field, and giving resident hunters the opportunity to bring in nonresident hunters on the guaranteed license totally disrupts the outfitter segment. Opposes HB 306.

Kelly Flynn, Montana Outfitters and Guides, stated HB 306 is an anti-economy bill. It intentionally replaces a pool of nonresident guided hunters with a pool of nonresident unguided hunters. A 1992 study by MSU College of Business shows a nonresident guided hunter spends \$2,500 more on a trip to Montana than a nonresident unguided hunter. This Bill takes money away from small business and rural economy. A 2000 study by John Adams, called Outfitter Jobs and Income Study, shows for outfitters in Montana, that 14% of their income is derived from clients going on hunting trips. 50% of those outfitter's income came from those trips, and is the outfitter's base platform of income. If you take away a large portion of income from that

building block, you have the collapse of not just the hunting outfitting industry in Montana, you have the potential collapse of all the outfitting industry in Montana and potential crippling of another segment, the agricultural industry. According to the Year 2000 Outfitter Jobs and Income Study, "Taylor and Riley's 1990 study of the outfitting business found that Montana's outfitting as a whole had an economic impact of \$159,000,000 in 1998 dollars". **REPRESENTATIVE BALLYEAT** talked about something that came about in 1995, but the 5,500 market based licenses didn't come from there. In 1986, FWP determined there were 5,600 nonresidents that hunted with outfitters. The 1987 legislature statutorily set aside 5,600 licenses reserved for clients of outfitters. The 5,500 is less than the 5,600, but that isn't the most important point; the economy is the most important point.

Todd France, representing himself, stated that many residents are wealthy enough to acquire a lease on their own or form a group to lease property. On private leases, the outfitters are the ones getting blamed for tying up land. The Board of Outfitters has governing regulations they follow before approving an outfitter's expansion, to make sure outfitters are not taking private land away from the public or tying up land that may never have been available to the public. One of the qualifications is historic use of the property by the public. Regarding current allocation of forest use, if lose guaranteed days, concerned about being able to book forest use days. Agree this will be an enforcement nightmare the way it is worded. He offered the following suggestions: setting aside certain number of guaranteed tags for nonresidents on a first come, first serve basis that wouldn't take away from the number of outfitter sponsored licenses. Another idea would be to have a resident sponsor up to two immediate family members for a guaranteed tag, instead of just any nonresident. In other words, make the number of immediate family member licenses come from the number of lottery drawn nonresidents. **CHAIRMAN FUCHS** asked that the suggestions be put in writing. See **EXHIBIT(fih18a07)**.

Robin Cunningham, representing himself, stated, the potential for unlicensed outfitting by a landowner is great under these circumstances. The appeal of a nonresident who is unrelated, is greater, both from the landowner side and from the hunter wanting to come to a situation where they aren't rules around and where they don't have to battle with other hunters. Please consider **TODD FRANCE's** suggestion to limit this to a specific pool and to a specific nonresident family member.

{Tape : 2; Side :A}

Chris Smith, Fish, Wildlife and Parks, stated, FWP sees a lot of good things in this bill, the opportunity to increase flexibility, and an increase in block management. There are technical problems with the Bill as drafted, opening the door to illegal outfitting. Seeing the language problem, the sponsor intends to close that loophole. The 1993 Legislature deadlocked over this very issue, and that was when Private Landowners Public Wildlife Council (PLPWC) began. They spent the next two years working this out and came back with a solution in 1995 strongly supported by nearly everyone. FWP has continued to adapt in response to change. FWP recommends Bill be tabled, allow **REPRESENTATIVE BALLYEAT** to continue to support and share those concerns, work through the forum that the PLPWC process provides, and see if they can draft a solution.

Questions from Committee Members and Responses:

REPRESENTATIVE SHOCKLEY states, were you suggesting that before a legislator goes through our committee, that they go through PLPWC to get their cooperation? **Chris Smith, FWP** answered, I was not saying there should be any requirement to do that; it is the legislator's prerogative. I was suggesting that as an additional process on many of these controversial issues, to allow PLPWC deliberation on the issue and attempt to seek consensus, then bring the issue to the committee, would help address some of these concerns. **REPRESENTATIVE SHOCKLEY** states, it seems as if you said that if legislators did not go through this entity, that the department would not support the Bill, and in fact would be opposed to the Bill. Please clarify. **Chris Smith, FWP**, states he is not sure that was stated, but can see how that conclusion could follow from FWP opposition to this Bill. **REPRESENTATIVE SHOCKLEY** stated he does not have a position on the Bill.

REPRESENTATIVE CLARK states that, as information, he is the House delegate to the PLPWC, and would like to call on **Henry Worsch** for testimony. **CHAIRMAN FUCHS** said there was no objection. **REPRESENTATIVE CLARK** asked for information regarding the amount of land leased by outfitters. **Henry Worsch, Montana Board of Outfitters**, stated 8 million acres were leased in 1999 statistics, Year 2000 statistics are not out yet. **REPRESENTATIVE CLARK** said that PLPWC requested an audit on net client hunting use because they are concerned that outfitters and the Board of Outfitters kept up the kind of data that was required to comply with legislative intent in limiting the expansion of outfitting. Feels it is important they get a short description of that audit and what has been done. **Henry Worsch** stated he did not bring a copy with him; he prepared a handout in November. Basically they set up procedures to further audit outfitters and the industry and address their concern. Can get copy of his response to all

the members if that would help. **CHAIRMAN FUCHS** asked that this be done.

REPRESENTATIVE DEVLIN asked, what is the number of resident hunters that you spoke of in your testimony? **Jean Johnson** replied, 170,000 resident hunters, per the MWF.

REPRESENTATIVE JENT asked, I know PLPWC requested a legislative audit to determine information about the amount of land being leased, number of hunters, how the program is working. Will a Bill be proposed by PLPWC that addresses the problems addressed in HB 306. **REPRESENTATIVE CLARK** replied, the Bill coming from PLPWC and sponsored by **SENATOR WALTER MCNUTT** will specifically address the block management program. We don't have a bill that addresses this issue as its major focus.

REPRESENTATIVE BARRETT asks, if resident hunters can hunt on the block management and not have to pay because nonresidents pay for it with their licenses, why would resident hunters be unhappy with the current PLPWC situation? **REPRESENTATIVE BALLYEAT** states, objections that have been raised are that while block management has provided some money for access to private lands for resident hunters, the manipulation of the free market for hunting leases has a greater negative effect. When large incentives were provided to one faction of the competitive market for hunting leases, it permitted the price for prime private hunting land to go beyond the reach of both block management and private residents. There was a bidding war, and it became an offer the private landowners couldn't refuse. This is governmental manipulation of an otherwise free market.

CHAIRMAN FUCHS states, a lot of hard work went into the 1995 deal that was struck by the committee, and we felt it would save hunting for residents, etc. I feel the outfitters and block management came out well, but don't feel the residents came out well. Aside from your paid reason for being here, What are your real feelings as to the balance that was struck? **Jean Johnson, MHGA** asked if she was being asked to speak as a Montana hunter, rather than as a lobbyist for the MHGA. **CHAIRMAN FUCHS** replied, yes. **Jean Johnson** states, what I do for MHGA is not done because they pay me well. I do it because I believe in them and I like them. As a resident this past year, I hunted on some private land just because I asked them, and, I hunted on some block management. As far as your opinion about hunters coming out on the short end of this whole program, I know there are those that feel they did. I know block management parcels are not equal all over the state, and some provide opportunity with less crowding conditions than others. That isn't an issue that the outfitting industry has any control over. It is an issue that goes to the

group that sportsmen in the department work with, and you should direct questions to Allen Charles who manages the program. There are a lot of resident hunters who think the block management program offers a lot of opportunities. **CHAIRMAN FUCHS** asked if she would be willing to participate in a subcommittee, as it appears this Bill has some potential, but will need some changes. **Jean Johnson** answered that she would be honored to serve on one.

Closing by Sponsor:

REPRESENTATIVE BALYEAT gave closing remarks that are contained in **EXHIBIT(fih18a08)**. He stated that the two suggestions made today were first made by him in a slightly different form several weeks ago to a representative of the outfitting industry. At that time, **REPRESENTATIVE BALYEAT** stated he had said he was open to any amendments they would consider: 1) increasing the number of nonresident guaranteed licenses to accommodate a potential increase in demand from nonresident relatives. 2) restricting this to relatives of a certain degree of closeness, as in some other states. Is encouraged that there appears to be some diminishing in the lack of negotiation seen in the past.

Close Hearing on HB 306.

CHAIRMAN FUCHS appointed the following to a subcommittee: **REPRESENTATIVE RIPLEY, REPRESENTATIVE BALYEAT, REPRESENTATIVE GUTSCHE, Jean Johnson, MOGA.**

EXECUTIVE ACTION ON HB 142

Discussion:

Proponent testimony from **Dale Williams, Flathead County Board of Commissioners** was entered into the record as **EXHIBIT(fih18a09)**, but was not read into the committee meeting.

CHAIRMAN FUCHS stated this is **REPRESENTATIVE SOMERVILLE'S Bill**. **REPRESENTATIVE CLARK** gave a recap for the subcommittee and presented amendments that were agreed upon, **EXHIBIT(fih18a10)**. He states that no negative feedback was received from the houndsmen as to how the amendments would affect the Bill. Amendments fall into four categories: 1) to put in the sunset, and 2) to take out the provision that FWP gets to determine the quality of the hunt, 3) to separate the bears from the mountain lions, and 4) to restrict the provision that FWP would have authority to regulate nonresident hunters just in region one. **DOUG STERNBERG** added that the termination date is in amendment

12, the sunset is after the mountain lion season in 2004.

REPRESENTATIVE RICE asked if the committee had communication with the houndsmen after the amendments were drafted. **REPRESENTATIVE CLARK** said he received information from the resident houndsmen and the outfitters to move along conservatively and not move directly into a permit system. However, if the situation would get worse in region one, it would give FWP authority to move into a permit system if they determined that was the best way to go.

Motion: REP. CLARK moved that **AMENDMENT TO HB 142 DO PASS.**

REPRESENTATIVE SHOCKLEY asked where region one is, how far south it goes. **REPRESENTATIVE CLARK** asked that question be redirected to **Don Childress, FWP**, who answered it is basically northwest; down through Thompson Falls, along the Clark Fork, back toward the reservation boundaries. Ravalli County is region two.

REPRESENTATIVE SHOCKLEY stated he would like to address a problem from one of his constituents, with what he just found out. It is like we have in the Big Hole, there if we control outfitting, on the Big Hole in that case, you throw all the outfitters over onto the east fork of the Bitterroot and the upper Clark Fork. My constituent was concerned if they control hunting just in region one, then you throw all the out of state lion hunters into other easily accessible areas such as Ravalli County and Beaverhead.

CHAIRMAN FUCHS stated, that is probably a good point, but based on information he received, there are plenty of mountain lions available in the other areas. **REPRESENTATIVE BALLYEAT** said they talked about this in subcommittee. Even if give FWP authority to go to a drawing system in region one, they probably won't use it region wide, maybe only in a couple of districts within region one. Should ask FWP to clarify that. Won't cause spillover. This has a short sunset, as we want this to only be an experiment to see how it works. **CHAIRMAN FUCHS** called for a vote.

REPRESENTATIVE CLARK stated he wanted to add that the preferred route for instate houndsmen is for FWP to have authority to control out of state houndsmen first. This gives FWP the authority to do that, and it gives broader authority in case that doesn't work. Regulating out of state hunters is the preferred route to go before regulating in state hunters. The last resort is to go to a permit system.

Motion/Vote: REP. LASZLOFFY moved that **AMENDMENT TO HB 142 DO PASS. Motion carried 17-0.**

Motion/Vote: REP. CLARK moved that **HB 142 DO PASS AS AMENDED.**
Motion carried with voice vote of 15-2 with Bales and Devlin
voting no.

ADJOURNMENT

Adjournment: 5:50 P.M.

REP. DANIEL FUCHS, Chairman

LINDA KEIM, Secretary

DF/LK

EXHIBIT (fih18aad)